



MINUTES OF THE MEETING OF THE MEDICAL SERVICES BOARD

303 East 17th Avenue, 7th Floor Conference Room
July 11, 2014

Improve health care access and outcomes for the people we serve while demonstrating sound stewardship of financial resources.

Members present: Mike Stahl (President), Brenda LaCombe (Vice President), Timothy Fox, Patricia Givens, Bregitta Hughes, Donna Roberts and Mary Trujillo-Young.

Members Excused: Christy Blakely, Richard Markley, Paul Melinkovich, and Ginny Riley

Staff Present: Suzanne Brennan, Deputy Executive Director/Director, Health Programs Office; Jennifer Weaver, First Assistant Attorney General; Judi Carey, MSB Coordinator; and Dan Hutchinson, Staff Support

1. Call to Order: President Stahl called the meeting to order at 9:00 a.m.
2. Roll Call and Announcements: The Board Coordinator called the roll. There were sufficient members for a quorum with seven members participating and four members excused. Mr. Fox, Ms. LaCombe and Dr. Young participated by telephone conference call.

Mr. Stahl announced that the next Medical Services Board Meeting will be held in the 7th floor conference room at 303 East 17th Avenue in Denver on Friday, August 8th at 9:00 a.m.

It is the policy of this Board and the Department to remind everyone in attendance that this facility is private property. The capacity of the meeting room is 80. Please do not block the doors or stand around the edges of the room. Please turn cell phones off while in the meeting room as they interfere with the recording equipment.

3. Approval of Minutes: Dr. Givens moved for the approval of the June minutes. The motion was seconded by Ms. Roberts. There were no other comments and the minutes were approved as amended 6:0:1. Ms. LaCombe abstained from the vote.
4. Rules:

FINAL PERMANENT ADOPTION AGENDA

Document 03 MSB 14-06-02-A Revision to the Medical Assistance Benefit Section Rule Concerning Dental Services, Section 8.201.

Ms. Hughes moved for the final permanent adoption of Document 03. The motion was seconded by Ms. Roberts. Bill Heller, Provider Relations and Dental Program Division, and Max Salazar, Health Programs Benefits and Operations Division, presented the proposed rule and explained that it was being presented as the permanent version of the emergency rule adopted in June. Changes made to this version of the proposed rule were explained.

Dr. Givens was out of the room.

Board Discussion

Board discussion and questions included the fact that there was no additional stakeholder input but that most of the changes presented were from previous stakeholder feedback.

Public Testimony

No one was signed up for public testimony on Doc 03.

The Board voted for the final permanent adoption of Document 03, 6:0.

Document 04 MSB 14-04-21-C Revision to the Medical Assistance Rates Section Rule Concerning Encounter Rate Calculation, Section 8.700.6.C.

Mr. Roberts moved for the final permanent adoption of Document 04. The motion was seconded by Ms. Hughes. Richard Delaney, Health Programs Benefits and Operations Division, presented the proposed rule and explained that it implemented an increase in reimbursement to Federal Qualified Health Centers back to actual cost.

Board Discussion

Board discussion and questions included that smaller FQHCs are not actually receiving a higher rate of reimbursement but rather their costs were lower when the mid-point reimbursement methodology was implemented.

Public Testimony

There was no public testimony on Document 04.

The Board voted for the final permanent adoption of Document 04, 6:0.

Document 05 MSB 14-04-21-A Revision to the Medical Assistance Pharmacy Section Rule Concerning Durable Medical Equipment and Disposable Medical Supplies Provider Rate Increase, Section 8.590.7.I.

Ms. Hughes moved for the final permanent adoption of Document 05. The motion was seconded by Ms. Roberts. Eskedar Makonnen, Pharmacy Unit, presented the proposed rule and explained that it implements a reimbursement increase for Durable Medical Equipment by 2% to comply with the Long Bill.

Board Discussion

There was no board discussion on Document 05.

Public Testimony

There was no public testimony on Document 05.

The Board voted for the final permanent adoption of Document 05, 6:0.

Document 06 MSB 14-04-21-B Revision to the Medical Assistance Rates Section Rule Concerning Payments for Outpatient Hospital Services, Section 8.300.6.

Ms. Roberts moved for the final permanent adoption of Document 06. The motion was seconded by Ms. Hughes. Luisa Sanchez de Tagle, Payment Reform Section, presented the proposed rule and explained it implements a 2% rate increase to comply with the Long Bill.

Board Discussion

There was no board discussion on Document 06.

Public Testimony

There was no public testimony on Document 06.

The Board voted for the final permanent adoption of Document 06, 6:0.

FINAL PERMANENT ADOPTION BY CONSENT AGENDA

Document 07 MSB 13-12-20-A Revision to the Medical Assistance Health Programs Services and Supports Rule Concerning the Program of All-Inclusive Care for the Elderly, Section 8.497

Ms. Hughes moved for the final permanent adoption by consent of Document 07. The motion was seconded by Ms. Roberts.

The Board voted for the final permanent adoption by consent of Document 07, 6:0.

INITIAL APPROVAL AGENDA

Document 08 MSB 14-04-24-A Revision to the Medical Assistance Eligibility Rule Concerning Reasonable Opportunity Period (ROP) for Citizens and Non-Citizens, Section 8.100.3.G and 8.100.3.H.

Ms. Roberts moved for the initial approval of Document 08. The motion was seconded by Ms. Hughes. Shawn Bodiker and Geoffrey Oliver, Eligibility Determination Division, presented the proposed rule and explained it extends to 90 days the ROP for citizens, nationals and non-citizens applying for services to provide appropriate qualifying documentation.

Dr. Givens returned to the meeting room.

Board Discussion

Board discussion and questions included: that changes based on the Attorney General's Office review will be technical in nature and not substantive; that services are being provided during the 90 day period; a request to review the rule text to see if the language in the two sections could mirror each other better; and that staff will review and make revisions where possible.

Public Testimony

Lucas Atkins, Volunteers of America

Public testimony included: a request for staff to research the Old Age Pension (OAP) verification period and align, if possible, with the Medicaid ROP; and that Department staff will have discussion with staff at the Department of Human Services who have authority for the OAP program.

The Board voted for the initial approval of Document 08, 7:0.

**Document 09 MSB 14-03-05-B Revision to the Medical Assistance Rule
Concerning the Limitation to Medicaid Estate Recovery, Section 8.063**

Dr. Givens moved for the initial approval of Document 09. The motion was seconded by Ms. Roberts. David Smith, Benefits Coordination Section, presented the proposed rule and explained it removes the Department's ability to recover assets from the estate of a recipient who received benefits that are optional under federal law.

Board Discussion

Board discussion and questions included: that Department staff will clarify whether reimbursement to Hospice providers is included in the exclusion; that federal law requires the state to recover, in some instances, while others are optional, and that this takes the optional off the board; that rather than the revision listing what would not be recovered, it combines existing rule language with the way the federal requirements are written; that the rule defines what we will recover instead of what we won't recover; that the Department's State Plan Amendment (SPA), or contract with the federal government, defines the only categories allowable for recovery; that the language in this rule is basically verbatim from the SPA; an explanation that the rule text indicated as a strike out at §8.063.20 is archaic; that Department staff will research this provision and provide additional information at the final hearing; that the term "cost effective" is not defined specifically because of the fluid nature of the probate process and the real estate market; that if it costs more to recover than there are assets, the Department won't proceed; an analysis of the data indicates the impact of this rule will be around \$500,000 per year; that Department staff will review and determine if language can be included to reinforce what won't be recoverable; and that this rule defines that base Medicaid benefits are not subject to recovery, but that Long Term Supports and Services benefits could be.

Public Testimony

There was no public testimony on Document 09.

The Board voted for the initial approval of Document 09, 7:0.

**Document 10 MSB 14-04-02-B Revision to the Medical Assistance Long Term
Services and Supports Division Rule Concerning Supportive Living Programs, Section
8.515.85**

Ms. Roberts moved for the initial approval of Document 10. The motion was seconded by Dr. Givens.

Mr. Stahl stated that he works for an agency that operates a Supportive Living Program. Ms. Hughes stated that she works for an agency that operates a Supportive Living Program.

Colin Laughlin, Long Term Services and Supports Benefits Section, presented the proposed rule and explained it adds new definition and an alternative licensure for the Supportive Living Program to give providers unifying guidelines for the services they offer. In addition, the rule provides the groundwork for implementation of new federal rules

around homelike criteria and person centered care. An “R” page¹ document was submitted for inclusion.

Ms. Roberts made a motion to include the R page. The motion was seconded by Ms. Hughes and approved, 7:0.

Board Discussion

Board discussion and questions included: appreciation for the work the Department has done on this rule; that these rules set the stage for ongoing dialog with the intent to create a specific licensure for this program rather than the current hybrid; that the Department is looking at a full effective date of January 1, 2016 to allow providers ample time to meet the program requirements; that the Department will continue to work with staff at the Colorado Department of Public Health and Environment (CDPHE) to develop a license-type specific to this program; that the rule has a large number of incorporation by references to other regulatory text, making it difficult to read and follow; that Department staff will review the rule and determine where these references can be added to the text; that work on the alternative license process will continue and be shared with partners as soon as possible; that the intent of the federal requirements for establishing a home-like environment make sense but in practice may actually be harmful to the client; suggestions for methods to exempt providers from requirements, when well documented and appropriate and in order to keep clients safe; that Department staff are continuing to review the federal rule and work with the Centers for Medicare and Medicaid Services (CMS) to come to workable solution; and Department staff are continuing to work with staff at CDPHE to identify and correct other issues.

Public Testimony

There was no public testimony on Document 10.

The Board voted for the initial approval of Document 10, 7:0.

Document 11 MSB 14-05-08-A Revision to the Medical Assistance Rule Concerning Early and Periodic Screening Diagnosis and Treatment (EPSDT) Personal Care Section 8.535

Ms. Hughes moved for the initial approval of Document 11. The motion was seconded by Ms. Roberts. Meredith Henry, Health Programs Benefits Management Section, and Max Salazar, Health Programs Operation Section, presented the proposed rule and explained that it implements a State Plan Personal Care benefit for children from birth through the age of 20.

Board Discussion

Board discussion and questions included a comment that, when referring to care for children, appropriate cognitive and emotional development should be considered and appropriate care defined explicitly.

Public Testimony

Carol Meredith, The ARC Arapahoe & Douglas Counties
Sam Murillo, Family Voices Colorado

¹ “R” pages are pages of the rule that contain revisions submitted to the Board for approval after the rule has been published or otherwise made available to the public.

Elizabeth Arenales, Colorado Center on Law & Policy
David Bolin, Accent on Independence (**Mr. Bolin had to leave the meeting before he could testify.)

Public testimony included: concern that some definitions are too restrictive; that the developmental level of the child should be considered when determining number of hours allowed; that the needs of the children must be approached on an individual basis; that Department staff will take these suggestions back for further discussion and consideration; that there is support for the concept and the benefit but not for the rule, in its current state; several issues around the availability of sufficient information, rates, training and access to services; that the use of the tool should ensure clear and objective initial and ongoing assessments; concern with the requirement that legal guardians be present when services are provided; ensuring parents are included and consulted as experts for behavioral issues with their children; that the intent of the rule is to provide services for the immediate and urgent needs of the child, due to the hourly reductions; that Department staff defined their plans for developing and providing training and confirmed that they are convening an ongoing stakeholder workgroup; the importance of coordination of care within the school setting; that Department staff will review Colorado Department of Public Health and Environment (CDPHE) requirements for the definition for skilled transfers and how it is used in this rule; that there is no requirement in this rule stating that a parent or legal guardian must be present while service is rendered; that Department staff will review CDPHE and Department of Regulatory Agency rules to determine if this is a requirement on their part; that the possibility of having a skilled caregiver and a personal needs caregiver at the same time will be addressed on an individual basis and that staff will further investigate how this works practically; the importance of providing parents with easily accessible and appropriate methods to appeal decisions; concern with possible discrepancies between the rule and federal law concerning the threshold of daily living activities required to receive service; that federal EPSDT requirements are that, when medically necessary, services must be provided; ensure the rule is clear that there is an exception process for this threshold and vigorous trainings; that there needs to be more discussion and clarification about the inclusion of independent activities of daily living as part of this benefit; that these activities are a requirement under the federal EPSDT law; that there needs to be further discussion about how this impacts waiver programs; that federal law mandates services be provided outside the home in a public setting which includes school grounds; that a major component of protective oversight includes queuing which needs to be stated explicitly in the rule; that the department is using a step approach in developing and implementing this benefit and this is the first step; that there is much work still to be done and the intent is to continue to move forward; that it is a very difficult process to define benefits appropriately and get families the services they need immediately; and the Department will be meeting with stakeholders and CMS to further improve this benefit and rule.

The Board voted for the initial approval of Document 11, 6:0. Dr. Young did not vote.

Dr. Givens moved to close the rules portion of the agenda. The motion was seconded by Ms. Hughes. The motion was approved 6:0.

5. Open Comments:
Lucas Atkins, Volunteers of America
6. Department Updates:
 - Personal Care Assessment Tool Update –Jeannette Jansson, Client and Clinical Care Office, Chief Nursing Officer
 - Department Update/Questions – Suzanne Brennan, Deputy Executive Director/Health Programs Office Director
7. The meeting was adjourned at 12:35.

The next scheduled meeting of the Medical Services Board is at 9:00 a.m. on Friday, August 8, 2014 in the 7th floor conference room at 303 East 17th Avenue, Denver, CO.

Reasonable accommodations will be provided upon request for persons with disabilities. Please notify the Board coordinator at Judith.carey@state.co.us or 303-866-4416 at least one week prior to a meeting if you need special accommodations in order to participate.